Mr. Joaquim, however, further argued that if I would not follow *Empress v. Baikanta Bauri,*[1] the Magistrate should not have convicted the appellant on the uncorroborated evidence of Kanagasapai. In this connection he referred to *Woodroffe and Ameer Ali* on Evidence, 9th edition, page 962. I agree with the principles therein set out that Courts should, as a rule, be careful to accept the testimony of a single witness in regard to the proof of any fact although the law permits them to do so, but in this case the Magistrate was convinced as to the truth of Kanagasapai's evidence, and that being the case, he was right in convicting the appellant, and that a conviction in such a case can be recorded is recognised in the text-book above referred to.

I see no grounds for setting aside the conviction, and the appeal is dismissed.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

POYSER, C.J.

May 9, 1939.

ALICE ANG ETC.

v.

MRS. LAU EK CHENG & 2 OTHERS.

[SELANGOR CIVIL SUIT No. 183 of 1938]

Road accident—driving of motor car without owner's permission—negligence—whether owner liable.

The plaintiff, a dancing hostess, sued the defendants for damages for injuries sustained by her in a motor car accident. On the 23rd August 1938 the plaintiff was travelling in a car belonging to the 1st defendant on the invitation of the 2nd defendant. At the time of the accident the car was driven by the 2nd defendant. The 3rd defendant, who was in the car at the material time, was a nephew of the 1st defendant and he was a minor. The evidence established that the 2nd defendant's driving was grossly negligent and that the plaintiff came by those injuries as a result of such negligent driving. There was no evidence that the 1st defendant authorised the 2nd defendant or anyone else to drive, or permitted the use of the car in driving, the plaintiff from the scene of her labours to her home, or that the car was lent to the 3rd defendant who did not object to the 2nd defendant driving the car.

Held, that the 2nd defendant was liable in damages for his negligent driving.

Held further, that the 1st defendant was not liable for the 2nd defendant's negligence inasmuch as she had never permitted the 2nd defendant to use her car and that the 3rd defendant was also not liable under any implied contract as was pleaded in this case, for, as a minor he was not competent to contract.

Cases referred to:—

(1) *Daniels v. Vaux,* (1938) 2 All E.R. 271; (1938) 2 K.B. 203.

(2) *Engleheart v. Farrant & Co.,* (1897) 1 Q.B.D. 240.

(3) *Lankat bin Rantau v. Yew Lee Low,* 6 F.M.S.L.R. 146.

(4) *Monk v. Warbey,* (1935) 1 K.B. 75.

(5) *Parker v. Miller,* 42 T.L.R. 408.

(6) *Raja Singh v. Chin Fatt,* (1936) F.M.S.L.R. 15; (1936) 5 M.L.J. 157.

(7) *Reichardt v. Shard,* 31 T.L.R. 24.

TRIAL OF SUIT.

Joaquim (*Cumarasami* with him) for the plaintiff.

Hastings for 1st and 3rd Defendants.

Second defendant in person.

Joaquim for the plaintiff cited *Parker v. Miller*[5], *Reichardt v. Shard,*[7], *Engleheart v. Farrant & Co.*[2], *Daniels v. Vaux*[1] and *Monk v. Warbey,*[4].

Hastings for the 1st and 3rd Defendants:—On the facts proved there is no case in law against either the first or the third defendant.

As regards first defendant—on the facts either there was a bailment of the car from the first defendant to the third defendant. If that is the fact first defendant not liable during continuance of bailment.

Daniels v. Vaux[1].

If there was not a bailment a suit does not lie against a passenger *i.e.* third defendant.

The principle that bailor not liable followed in this country.

Lankat bin Rantau v. Yew Lee Low,[3].

Raja Singh v. Chin Fatt,[6].

(Joaquim—I do not contend that there was a bailment in this case).

Then the case rests on (2) Agency. No evidence that third defendant was agent of the first defendant. No evidence that first defendant authorised either second or third defendant to drive or deal with car. They are both trespassers and would be liable to first defendant for wrongful conversion of the car.

The only other way on which first defendant can be liable is on the principle of *Monk v. Warbey,*[4].

In that case it was proved that the owner had authorised the driver who was negligent to drive the car. There is no evidence of that here.

As to the third defendant. He is a minor and his contracts are void. The only way the case could be put against him is that he represented that he was in a position to control the car and is estopped from denying that he was in such a position. In order to establish estoppel the plaintiff must shew that he acted on the representation to his detriment. There is no evidence that she did so in this case.

Poyser, C.J.—In this action the plaintiff claims damages from the defendants for injuries she sustained in a motor car accident. The action was originally brought against the 1st and 2nd defendants. In her statement of claim the plaintiff alleged that the 1st defendant was the owner of a motor car No. PK. 857, that on the 23rd August 1938 at about 12.30 a.m. she was travelling in the said car on the invitation of the 2nd defendant, that an accident took place in which she sustained serious injuries, and that such accident was due to his careless and negligent driving. She also alleged that at the time of the accident the 2nd defendant drove the car in the capacity of the 1st defendant's agent or, alternatively, acted on the implied authority of the 1st defendant.

In their defences the 1st defendant denied that the 2nd defendant had any authority, implied or otherwise, to drive her car; and the 2nd defendant admitted driving the car in question and the accident, but denied that such accident was due to his carelessness or negligence.

Shortly before the trial the plaintiff obtained leave to make the 3rd defendant a party to the action, and filed an amended statement of claim. In such claim she set out that the 1st defendant loaned her car to the 3rd defendant, and the 2nd defendant was in control of the car at the time of the accident with the permission of the 3rd defendant. She also alleged that the 1st defendant was liable for the injuries the plaintiff sustained by reason of her permitting the 2nd and 3rd defendants to use the car in the absence of a policy of insurance in respect of third party risks.

The 3rd defendant filed a defence in which he set out that he had no authority from the 1st defendant to allow the 2nd defendant to drive the car, and he also set out that he was a minor.

At the commencement of the trial it appeared that the 3rd defendant's contention that he was a minor was correct. He produced his birth certificate which proved that he was only 19 years old.

Mr. Hastings suggested that as the 3rd defendant lived with the 1st defendant, his aunt, and he had no other near relative, the Registrar, under the provisions of section 419 of the Civil Procedure Code, should be appointed to be his guardian for the suit. As Mr. Joaquim did not oppose this suggestion, and the 1st and 3rd defendants agreed to it, I made order accordingly, and I did not consider an adjournment necessary in order to enable the Registrar to instruct a Solicitor, for, Mr. Hastings agreed to also represent the 3rd defendant and did not ask for an adjournment.

There was very little dispute as to the facts which briefly are as follows. On the day in question the 1st defendant came from Ipoh to Kuala Lumpur in her car PK. 857. The driver was the witness Sankeran, and the 3rd defendant her nephew and other persons came with her. They arrived in Kuala Lumpur about 2.30 p.m. and went to an hotel. Subsequently Sankaran drove the 1st defendant to several places in Kuala Lumpur, and at about 11.30 at night drove her from a Dance Hall at Bukit Bintang Park to her hotel, and on arriving there, the 1st defendant asked him to return to the Dance Hall and bring the 3rd defendant back. Sankaran then went back to the Dance Hall and parked the car.

The plaintiff, who was employed at this Dance Hall as a dance partner, danced several times during the evening with the 2nd and 3rd defendants, and they invited her and other dance partners to go home in their car. The invitation was accepted, and when the dance was over Sankaran drove the car to the front of the Dance Hall, and the plaintiff, and the witnesses Mary Chong, Leong Ah Sai, Annie Gan, Molly Wong and Lily Ng all got into the car; the plaintiff and Mary Chong sat in front and the others behind. Then the 2nd defendant took Sankaran's place and drove the car away.

The evidence varied somewhat in regard to the conversation that took place before the 2nd defendant took Sankaran's place. According to the plaintiff the 2nd defendent got into the driver's seat when he found that Mary Chong was sitting next to the driver. Annie Gan also stated that the 2nd defendant asked for Mary Chong. On the other hand, Sankaran and Lily Ng stated that the 3rd defendant asked the 2nd defendent to drive the girls back, as he knew the way and Sankaran did not. The 2nd defendant also stated that this was the reason why he drove.

I do not, however, regard the actual conversation of much importance. I think what happened was that the 2nd defendant did wish to sit next to Mary Chong; he knew her before and she was the most attractive of the passengers. When he found that she was sitting next to the driver, he decided to drive the car himself, and gave as a reason for so doing that Sankaran did not know the way. The 3rd defendant undoubtedly agreed to the 2nd defendant driving the car, and probably did tell Sankaran to hand over to the 2nd defendant.

On starting from the Dance Hall, the 2nd defendant, owing to his ignorance of the gears, backed the car into another car; the 3rd defendant then explained the gears to him, and the 2nd defendant drove away. He drove very fast according to the passengers in the car; at corners they were thrown to one side and they were all frightened. When they arrived at the sharp bend on Petaling Hill, shown on the plan, the car left the road, went on to the grass on the right hand side of the road, and after hitting a cement pillar ran into a tree. The plaintiff who was asleep at the time sustained serious injuries and did not recover consciousness till she was in hospital.

There was not the slightest doubt, in my opinion, that the driving of the 2nd defendant was grossly negligent. Apart from the evidence of the witnesses that the car was driven very fast, that they were thrown from side to side, and that they were frightened, the evidence of the Inspector of Police clearly established that at the sharp bend where the accident took place the 2nd defendant was driving recklessly. What happened was that the car was driven round the bend at an excessive speed, and went off the road on to the grass. The excessive speed is indicated by the brake mark of the right wheel of the car (C to D on the plan) the distance being 113 feet; further the road was 17½ feet broad and in good condition. At the moment of the impact the car was 12½ feet off the road.

The 2nd defendant admitted the accident, but stated that it was due to Mary Chong catching hold of his arm just before the accident; but he admitted stating in the police Court proceedings:—

> "I don't know if her doing it had any effect on the accident."

He admitted the girls were excited and shouting, but stated that he never exceeded 22 miles per hour and that the speed at the bend was about 15 miles per hour. I have not the slightest hesitation in accepting the girls' evidence as to speed and rejecting that of the 2nd defendant. The evidence of the Police Inspector, in my opinion, is conclusive corroboration of the girls' evidence, and established beyond the slightest doubt that the 2nd defendant's driving was grossly negligent.

For these reasons the plaintiff's claim must succeed against the 2nd defendant: but can it succeed against the 1st and 3rd defendants? In my opinion it cannot.

As regards the 1st defendant, she could only be held liable if the 2nd defendant was her servant or agent. She would not be liable if there been a bailment of the car to the 2nd defendant.

> "It is well established that upon the **bona fide** loan of a car by A to B, B is not the servant or agent of A, and if B has an accident, A is not liable upon this ground. **Daniels v. Vaux,**[1].

In regard to agency, I fail to see how the 2nd defendant can possibly be regarded as the agent of the 1st defendant. Her instructions to Sankaran—and the evidence in regard to such instructions was not questioned—were to go to the Dance Hall and bring the 3rd defendant back to the hotel. There was not the slightest evidence that she authorised the 2nd defendant or any one else to drive some girls from a dance hall to their home, and in fact it was conceded that in all probability she would have thoroughly disapproved of her car being used for that purpose. The evidence therefore clearly fails to prove that the 2nd defendant was the agent of the 1st defendant; and the only question remaining for determination, as regards her, is paragraph 11 of the amended statement of claim, viz: that she is personally liable in that she permitted the 2nd and 3rd defendants to use the car in the absence of a policy of insurance, contrary to section 51 of the Road Traffic Enactment, 1937, which it is conceded is substantially the same as section 35 of the English Road Traffic Act, 1930.

Mr. Joaquim (for the plaintiff) relied on *Monk v. Warbey,*[4] at p. 75, to support this plea. The headnote to that case is as follows:—

> "The owner of a motor car who, in contravention of s. 35, sub-s. 1, of the Road Traffic Act, 1930, permits his car to be used by a person who is not insured against third party risks, is liable in damages to a third party who has been injured by the negligent driving of the uninsured person. In such a case the object and purview of the Act show that the penalties prescribed by s. 35, sub-s. 2, were not intended to be the sole remedy for a breach of the owner's statutory duty.
>
> Where a person uninsured against third party risks is permitted by the owner to use a car, and injury is caused by his negligent driving to a third party, the latter may, where the uninsured person is without means, sue the owner of the car directly for damages for breach of his statutory duty and need not first sue the uninsured person."

The facts, however, were very different in that case. In this connection I would refer to the following passage in the judgment of Maugham, L.J.:—

> "The facts are simple. Warbey was the owner of a motor car in respect of which he was insured as required by the Statute against (inter alia) the probability of third party risks when he himself or a member of his family was driving; but admittedly he was not insured against third party risks if some uninsured person was permitted by him to drive the car. Out of the kindesss of his heart, Warbey lent his car to the defendant Knowles. Knowles told Warbey that the third defendant May would drive the car and to that Warbey made no objection."

In this case the 1st defendant never permitted the 2nd defendant to use her car and, as stated before, would most certainly have not allowed it to be used for the purpose it was. I fail to see, therefore, how the 1st defendant can be held, under any provision of the Road Traffic Enactment, to be liable for the 2nd defendant's negligence, and the plaintiff's action against her must be dismissed.

As regards the 3rd defendant, at a very late stage in the trial Mr. Joaquim asked that the following amendment to his statement of claim be allowed:—

> "11A:—That the 3rd defendant is liable for the injuries which the plaintiff has sustained in that he permitted the 2nd defendant to use the said car in the absence of a policy of insurance in respect of third party risks contrary to section 51 of the Road Traffic Enactment 1937."

Mr. Hastings conceded that the Court had power to allow the amendment, and did not seriously oppose it. I therefore allowed it. I fail, however, to see how the 3rd defendant can be made liable on the authority of *Monk v. Warbey*[4]. In the first place the car was not his or lent to him, nor was he the agent of the 1st defendant for the purpose of permitting any other person to use the car. He certainly did not object to the 2nd defendant driving the car, and perhaps encouraged him to do so, but I cannot see that he thereby 'permitted' the 2nd defendant to drive the car within the meaning of the Road Traffic Enactment. To so hold would, in my opinion, be going far beyond any principle laid down in *Monk v. Warbey*[4]. Further, the 3rd defendant cannot be held liable for the 2nd defendant's negligence under any implied contract, for, under the local law a minor is not competent to contract.

For these reasons the plaintiff's action only succeeds against the 2nd defendant; and it only remains to consider what damages I should award her. This question according to the amended statement of plaint is largely academic, but I must direct my mind carefully to it. The plaintiff sustained serious injuries including a fracture of the skull; before the accident she earned $100 per mensem, and now she states that she cannot do the work she did before and suffers from giddiness and nervousness. This evidence was mostly unquestioned, and though no doubt she is exaggerating somewhat in regard to her physical condition now, she undoubtedly has suffered a lot of pain and would not be nearly as efficient a dance partner as before. Taking all the circumstances into account, I think $3,000.00 is a reasonable amount to award her. There will, therefore, be judgment for the plaintiff against the 2nd defendant for $3,000.00 and costs. Her action against the 1st and 3rd defendants is dismissed, and as regards the latter there will be no order as to costs. The 1st defendant is entitled to her costs, for, I cannot see that her conduct in any way justifies a departure from the ordinary rule. I can only express the hope, under the circumstances, that she will not enforce this order.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

February 16, 1940.

IN RE THE ESTATE OF MURUGAPPA CHETTIAR ETC. DECEASED.

[SELANGOR ORIGINATING SUMMONS No. 20 of 1940]

Probate and Administration—Grant of Administration to attorney—death of one of grantors of power —grant not thereby revoked.

M.C. deceased died intestate in India leaving him surviving a widow and a son who jointly and severally appointed an agent in this country as their attorney to apply for Letters of Administration. The attorney acting under the power in his favour applied for and obtained a grant of Letters of Administration. Without completing the administration the attorney went to India and appointed a substitute, the applicant. Before the estate had been fully administered, the son, one of the grantors of the power of attorney, died. In an application to Court for determination of the question whether the grant of Letters of Administration had lapsed or was still of full force and effect.

Held, that the grant of Letters of Administration was still of full force and effect.

Cases referred to:—

(1) *In Re Dinshaw deceased,* (1930) 142 L.T. 652.

(2) *Pipon v. Wallis,* (1753) 161 E.R. 148.

ORIGINATING SUMMONS.

V. Mackie for the applicant.